



TOWN OF WEARE
PLANNING BOARD
ZONING BOARD OF ADJUSTMENT
15 Flanders Memorial Road
P.O. Box 190
Weare, NH 03281
Phone: (603) 529-2250
Fax: (603) 529-4554

Naomi L. Bolton
Land Use Coordinator

Office Hours:
Monday
thru
Friday
8 AM – 4:30 PM

ZONING BOARD OF ADJUSTMENT
MINUTES
DECEMBER 8, 2009
(Approved as written 5/4/10)

PRESENT: Jack Dearborn, Chairman; Ian McSweeney; June Purington; Forrest Esenwine; Neal Kurk, Alternate; Naomi L. Bolton, Land Use Coordinator.

GUESTS: Chip Meany, Code Enforcement Officer; Melissa Descoteau; Chris Descoteau; Ginger Esenwine; Ed Cluche; Jack Moody; Chuck Bolton; Andrew Fulton

I. INTRODUCTION:

Chairman Dearborn called this meeting to order at 7:30 PM and asked the board members present to introduce themselves. Chairman Dearborn explained to those present the way by which the board conducts business.

II. ADMINISTRATIVE ITEMS:

There were no administrative items to take up at this time. Chairman Dearborn appointed Neal Kurk as a voting member for tonight.

III. PUBLIC HEARINGS:

Case #1509 Melissa Descoteau
Special Exception, 19, Section 19.1.8
The applicant is requesting permission to allow the applicant to provide child care for up to 9 children.
Tax Map 402-007.006 644 North Stark Highway

Forrest Esenwine moved to accept the application as complete; June Purington seconded the motion, all in favor. Melissa Descoteau was present and explained that she would like to have an in-home daycare to be able to take care of up to 9 children. Mrs. Descoteau went through the seven conditions as follows:

1. The specific site is an appropriate location for such a use or uses in terms of overall community development: I am using my residence to care for children in the community. It is a small group environment that supplies a caring family oriented setting.
2. The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighboring area: The children will play primarily in the home and outside in the playground area. The

- playground is set back 150 feet from the road and had a tree line which blocks most of the view.
3. The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians: The driveway has its own turn around at the top and has a large enough entrance at the bottom that it should not be a traffic issue. Also, parents pick up and drop off at varying times rather than all at once.
 4. The proposed use will not cause an undue burden on the Town through the provision of basic Town services: I don't anticipate any town services changing. The school bus service will remain the same. I also am using reusable dishes and recycling most of our trash to minimize our trash output.
 5. Adequate off-street parking be provided if determined necessary by the Zoning Board or Adjustment: My driveway is equipped with a large enough turn around to accommodate parents. Parking on the street is not needed.
 6. A buffer may be required to screen neighboring uses from the proposed uses. Buffers may be fence screens, dense planting of suitable trees and shrubbery, or naturally occurring shrubs and trees: I have a tree line to shield the house from the road for both safety and aesthetic reasons. The play yard area mostly cannot be seen from the road when the leaves are on the trees.
 7. The Zoning Board of Adjustment, in granting any special exception, may include such restrictions or conditions to insure compliance with this section:

Forrest Esenwine asked if on point #6 the buffer speaks to the road itself. Ms. Descoteau responded that on one side is the high school and other side is the abutter with a long driveway. The house lot is wooded and bushes.

Approving Abutters: None

Disapproving Abutters: None

Public At Large: None

Other Boards: None

Rebuttal: None

Chairman Dearborn closed the public hearing at 7:45 PM.

CASE DECISION: Forrest Esenwine moved to grant the special exception for Case #1509 as requested; June Purington seconded the motion. Vote: all in favor (Kurk; McSweeney; Dearborn; Esenwine and Purington).

Case #1609 John J. Moody

Administrative Appeal, Article 28, Section 28.9

The applicant is appealing the Code Enforcements order to furnish and plant trees along the edge of the property before an occupancy permit can be issued.

Tax Map 203-097

102 East Road

Forrest Esenwine stated that the location map was checked off on the checklist but there was none in the package. Mr. Esenwine moved to accept the application as complete; Ian McSweeney seconded the motion, all in favor.

Chairman Dearborn stated that he would first like to hear from Chip Meany our CEO on this. Mr. Meany stated that there is quite a bit of history to this property. There are two pieces of property, 102 and 104 East Road. It has always been taxed as two lots, even though one was vacant. Mr. Fottler passed away and the estate put the properties up for sale and it was subsequently sold to Jack Moody. Mr. Moody came in and got two building permits as it was two lots. Both building permits were issued and the plan at the time was to build a new house on the vacant lot and renovate the existing home structure. In the second phase of the project, the renovation of the existing structure, Mr. Moody got close to the buffer, so Mr. Meany stopped to see him and informed him that he was too close. Mr. Moody told Mr. Meany that he took down a few trees for safety and had stabilized it. Mr. Moody installed some silt fence and had already planted grass in the disturbed and Mr. Meany thought that was the end. The Conservation Commission (WCC) then got involved. Mr. Meany and Andy Fulton, Chairman of the WCC met on site with Mr. Moody. At that meeting Mr. Fulton stated what he would like to have done. The silt fencing and plantings were discussed and Mr. Fulton talked to Mr. Moody regarding the right and wrong of the goings on in a buffer zone. Mr. Fulton then came to the Town Office building for a WCC meeting and the next morning Mr. Meany received an email regarding what was to be done on that site, which was a change from what was agreed upon at the on site meeting.

Chairman Dearborn stated that at this time he would like to have Jack Moody speak. Mr. Moody added that when we met with Mr. Fulton, both Mr. Meany and himself felt that a hand shake agreement was made. Mr. Fulton stated that he was at the on site meeting more to educate Mr. Moody and not to bust his chops. Mr. Moody stated that he then got home to turn on Channel 6 and watched the WCC discuss this without asking him to come and discuss it. Mr. Moody stated that he entrusted Hopkinton Land Clearing to what was right and wrong around the wetland area. Any tree can be removed if it is a safety issue in the buffer area as long as the stump is left. Mr. Moody gave the board a letter from Hopkinton Land Clearing stating the trees were cut, the letter is marked as #2.

Forrest Esenwine stated the question that comes to his mind is, if he is allowed to cut trees that are endangering the structure and he is allowed to cut 50% of the basal area, why does the WCC claim jurisdiction of this? Why according to the WCC article in the zoning are they now forcing him to re-plant the whole side of the property and not just the four that were removed?

Chairman Dearborn stated the real question here is Mr. Moody thought he met the performance standard and he is being asked to do more than what is required. We either uphold the CEO for his sighting or we overturn it, that is what we have to do tonight. This is not a straight forward variance it is a binary question. If either party doesn't like the answer they can go to superior court.

Chairman Dearborn asked why there was a DES letter in the package that was not part of this property. There also was an email to Mr. Meany indicating that if the trees are not planted on this property then the other application Mr. Moody has for another project in Town will be attempted to be stalled.

Neal Kurk stated that we also have a letter from Mr. Fulton and asked if are we going to hear from him. The reason for hearing from Mr. Fulton is because every line from Mr. Bolton's email was found as a violation in Mr. Fulton's letter and he would like to ask more questions.

Chairman Dearborn stated that if the CEO chooses tomorrow morning to write up 4-5 things and the applicant wishes to come forward to dispute those things they have that right. A lot of this is very interesting but possibly not relevant.

Approving Abutters: NONE

Disapproving Abutters: Frank Bolton has a question on this map, these are existing trees drawn in? Mr. Moody stated yes and showed Mr. Bolton the photo's. Mr. Moody stated that the septic designer stated that there was no hydric soils within 75 feet of the septic. Mr. Bolton stated that he didn't know what to expect, but the only comment he would have would be on the existing plan. The bulk of the trees are in a wetlands. He talked to Hopkinton Land Clearing and the regulation we are looking at he understands. They basically cut a lot of trees but didn't cut the corner. There is a state regulation of 50'. He then called the wetlands bureau and they gave him the name of the forester. The forester stated that Mr. Moody's interpretation was not correct.

Chairman Dearborn stated that this is a very small piece on its face. It's probably below 2,000 SF for the whole length. Mr. Bolton stated that Hopkinton Land Clearing cut within the states 50' buffer. Chairman Dearborn responded that the state buffer is not relevant to tonight's case. Mr. Bolton thought that Mr. Moody misunderstood that NHDES was not connected with the subject property and there was no way he could have impacted another project. He thinks that some of the other issues that were brought up were off focus. He has a list of items to point out:

1. The lot includes frontage on Center Brook and an area adjacent to Center Brook (down front). Mr. Esenwine wants to know who has the authority for anyone to come to someone's property to tell a person to plant the entire length of the property. Mr. Bolton feels it is important that everyone knows the brook and the wetland.
2. It's approximately 100 foot from the building to the brook Mr. Moody is talking about. If you plant some trees it will take 50-60 years to reach the building. Hemlock might be better than pine.
3. He would point out that there is another home built on the adjacent lot. He left trees so he wasn't concerned about those.
4. The bottom line is even if there was concern of these trees it is not appropriate to do it and then ask for relief after. He stated he didn't know if the stumps are still visible.
5. Center Brook is one of the last brooks listed still with trout. He thinks we should try to protect it.

Other Boards: Andy Fulton, Chairman of the WCC was present and stated that he would like to speak to some issues raised this evening. First, regarding the hand shake meeting and a letter that came out. The understanding was that he didn't see any value in trying to pull the State wetlands bureau into this. He doesn't make an agreement with a

property owner on behalf of the WCC. Following that on site meeting, he did brief the WCC members to what he observed and his concern is that wetlands were not truly mapped on this lot.

Chairman Dearborn asked in this case, how would the authority get there? The septic system has been approved and if those 4 trees have never been cut we wouldn't have been here. How did you get involved on this property? We are here for the performance standard issue for the buffer. You want to re-establish the buffer.

Mr. Kurk stated that within 25 feet of center brook, aside from the 4 trees were there other lands disturbed. Mr. Fulton stated that Mr. Meany was sent to wetlands training, and yes, Mr. Meany has received wetlands training, but he has never been tasked to delineate something like this. Mr. Kurk stated that we have a situation that a land owner has done something on his property that according to the WCC was done in violation. Mr. Meany agreed. It is incumbent upon Mr. Moody to prove it was jurisdictional wetlands. But with respect to filling and disturbing: doesn't that require Mr. Moody to prove that? Mr. Fulton stated that there are more than four trees to this issue.

The board referred to an email dated July 31st paragraph #1, which states that as far as he is concerned there has been disturbance within the 25' buffer, was that correct. Mr. Fulton responded, yes.

Public at Large: NONE

Rebuttal of Mr. Meany, CEO: Mr. Meany stated that yes, he has been sent to UNH and he did pass the wetlands delineation class and he has books and all the required tools to delineate wetlands. He can delineate wetlands but not legally. He did stop to discuss with Mr. Moody what may have been in violation. He does believe that some of the areas there are 25', some are within and some outside. Mr. Meany stated that prior to getting the email from Mr. Fulton, Mr. Moody and he talked about stabilization, grass plantings and silt fence, then when he got the letter from WCC figuring they had more information, he wrote the letter to Mr. Moody. As far as the remediation he felt it was taken care of to his satisfaction, making marginal estimations. He didn't agree to the number of trees to be planted.

Ian McSweeney asked Mr. Meany to point out the areas on the map he was speaking about. Forrest Esenwine stated that the way he understands it, the WCC found a problem with the remedial work Mr. Moody did which he did based on Mr. Meany's input and that what he felt was in compliance. Mr. Meany responded, yes. Now after the fact the WCC is saying that he is in violation. The ground had already been disturbed when he saw it. Mr. Moody took the remedial action as asked to do. The disturbance happened with the cutting of trees and the equipment.

Jack Moody stated that he has one question for Mr. Meany. He would like to ask Mr. Meany if he felt that we were all in agreement with the work that was to be done with that meeting with Mr. Fulton. Mr. Meany responded, yes. He further added that when they had a meeting there was nothing said so he felt that what was done was sufficient.

Mr. Moody added that he did not disturb within 50' as the brook is not on the State list. He did do a few marks in the 25 foot wetlands and the trees were in danger of falling on the house and he was allowed to remove them as long as he didn't remove the stump. There were several holes in the roof of the house that his rebuilding from limbs of those trees. He felt that requiring \$4,000 of plantings is excessive.

Mr. Bolton stated that he talked to DES and we are talking about two different things. They did tell Mr. Bolton that Mr. Moody was told it has a 50' buffer area. He felt that a site walk should have been done on something like this for better visual. Jack Dearborn responded that they have in the past gone on site walks.

Andy Fulton stated that he met with Mr. Moody and Mr. Meany before a WCC meeting, it was no secret. As a practice, they don't require a land owner to show up to a meeting if there is a complaint to be discussed. In this case there was no hearing scheduled, this is a complaint that has come in and this is what he saw and the WCC made a recommendation from there. In the future, if there is a complaint with Mr. Moody he will try to make an invite, and it could possibly have had a different output. Regarding the danger of the house, he would make the point that you can remedy the danger of the house but you don't have to bring in the soil to cover the stump, which is not acceptable.

Neal Kurk stated to Mr. Fulton, that Mr. Moody stated that the only disturbance was some claw marks with the bucket of an excavator. From what you just said there has been disturbance by bringing in some material that killed the vegetation. Mr. Fulton stated that they have a different expectation and a different application.

Chairman Dearborn closed this hearing at 9:27 PM and thanked everyone for their professionalism in this delicate situation.

CASE DISCUSSION: Forrest Esenwine made a motion to uphold the CEO's decision in regards to case #1609; June Purington seconded the motion. Discussion: Mr. Esenwine stated that it seems to him the scope of this has come about from the WCC who far exceeds what the original citing was in regards to the original violation. If all things of this nature are put to this type of scrutiny, the cost of someone using their land could be very expensive. He is all in favor of WCC and protecting wetlands but sometimes we become overzealous and stretching it too far. He doesn't think a decision either way sets any precedent. Neal Kurk stated that he sees this case having two very important and different areas. First is substance, we as citizens have to obey the rules and need to find out where it applies to our property and I have to accept the consequences, in this case there was a clear violation within 25' of the buffer, that is the landowners responsibility. The fact that Mr. Meany thought one kind of mediation was equitable and if that is the kind of remediation allowed, then the ordinance has no teeth. That was Mr. Meany's decision and he felt that was an appropriate measure. Then he heard from the WCC, and there was all of a sudden an issue, even though he would have accepted a lower remedy, the letter from Mr. Meany is what we have to look at. He can't see any reason to overturn Mr. Meany's decision. He felt it was valid and he personally would have gone further, but we should uphold what he does unless it is clear that he has done something

wrong. Mr. Esenwine stated that he hears what Mr. Kurk is saying but by the same token Mr. Meany is the CEO and he worked out an agreement with Mr. Moody and felt he complied with the ordinance and then another board came along and didn't like it so they give him their opinion of what should be done. If Mr. Meany as the CEO is going to have to check with every board when he makes a decision then we are really going to put a monkey wrench into this. He made his decision. The land owner complied with what he wanted. He feels the man is in compliance and felt Mr. Meany did it properly. Ian McSweeney stated to Mr. Esenwine that he agrees with him that the CEO is an expert on some things, building requirements, etc., but he feels parts of Article 28.9 are easy but there are other parts that is not that easy to interpret and we can't agree on that standard. June Purington stated that it would seem to her that in writing this letter Mr. Meany can determine what type and number of trees would be required. Vote: 3 in favor (Kurk, McSweeney and Purington) and 2 opposed (Dearborn and Esenwine). Therefore the board upholds the CEO's decision.

IV. OTHER BUSINESS:

CASE #1209 – REQUEST FOR RE-HEARING GLENN & CHARLOTTE PRICE: Chairman Dearborn stated that one of the things he noticed in the attorney's brief was the fact that he made a very good point about the Town, and this board being the one that have to deal with this type of application, a subdivision that was approved by the Town years ago. Forrest Esenwine agreed that he got down to everything that we talked about that night and it is still there. Yes, there are some other houses there and under today's specs that wouldn't pass our subdivision standard. Yes, it was approved by the Town and now that zoning has been passed and after all this time the four year window was long ago. Neal Kurk moved to grant the request for rehearing for case #1209; June Purington seconded the motion. Mr. Kurk stated that he will be voting against this as he didn't see anything in this request that was relevant and new. Vote: 0 in favor and 5 opposed (Kurk; McSweeney; Dearborn; Esenwine and Purington).

NOVEMBER 3, 2009 MINUTES: Forrest Esenwine moved to approve the November 3, 2009 minutes as distributed; June Purington seconded the motion. Vote: all in favor.

ADMINISTRATIVE ISSUE: Chairman Dearborn stated that tonight is a history making moment and that after 15 years as the Land Use Coordinator Naomi will be leaving to concentrate on her new position as the Town Administrator. Chip Meany is going to take over as the Land Use Coordinator/CEO. Mr. Meany will be attending all the meetings. There will also be a minute taker to do the minutes. The board thanked Naomi for all her years of service and wished her well in her new position.

V. ADJOURNMENT:

As there was no further business to come before the board, Forrest Esenwine moved to adjourn the meeting at 10:00 PM; June Purington seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator